

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

Wheeling Division

**DIANA MEY,
CRAIG CUNNINGHAM,
STEWART ABRAMSON,
JAMES SHELTON,
DAVID and ROXY VANCE,
RUSSELL LOCKE, and
THOMAS STARK, individually
and on behalf of a class of all
persons and entities similarly situated,**

**Plaintiffs,
vs.**

Case No. 5:17-cv-00179-JPB

DIRECTV, LLC,

Defendant.

DEFENDANT DIRECTV LLC'S ANSWER TO THE AMENDED COMPLAINT

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant DIRECTV, LLC ("DIRECTV" or the "Defendant") hereby submits its answer to Plaintiff's Third Amended Complaint (the "Complaint"). No answer is required with respect to the headings, prayers for relief and other contents of the Complaint that do not set forth allegations of fact and are not included within numbered paragraphs.

1. The paragraph alleges information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

2. The paragraph alleges information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

3. DIRECTV admits that this Amended Complaint alleges violations of the TCPA, and states that the allegations of the complaint speak for themselves. DIRECTV further admits that it

contracts with certain third-party independent authorized dealers who are authorized to sell DIRECTV services and who receive sales commission payments. Independent authorized dealers are permitted limited use of DIRECTV trademarks and pricing information and certain limited access to ordering tools used by DIRECTV for submission of customer orders. Except as so admitted, the remainder of the paragraph is denied.

4. DIRECTV admits that it receives subscription revenue from providing satellite services to customers signed up by third-party independent authorized dealers. Except as so admitted, the remainder of the paragraph is denied.

5. DIRECTV admits that the Third Amended Complaint alleges violations of the TCPA, and states that the allegations of the complaint speak for themselves. Except as so admitted, the remainder of the paragraph is denied and DIRECTV further denies that it violated the TCPA or is responsible for the conduct of the third-party independent authorized dealers.

6. Denied.

7. Denied.

8. Denied.

9. DIRECTV admits that this Third Amended Complaint alleges violations of the TCPA, and states that the allegations of the complaint speak for themselves. Except as so admitted, the remainder of the paragraph is denied and DIRECTV denies that it violated the TCPA or is responsible for the conduct of the third-party independent authorized dealers.

10. The above-paragraph seeks information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

11. The above-paragraph seeks information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

12. The above-paragraph seeks information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

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15. The above-paragraph seeks information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

16. The above-paragraph seeks information that is not within DIRECTV's possession, custody, or control and thus DIRECTV denies the paragraph for lack of knowledge.

17. Admitted.

18. DIRECTV admits that it is not contesting subject matter jurisdiction over the claims in this case.

19. DIRECTV denies that this court is an appropriate venue for the claims of Cunningham, Shelton, and Abramson, for the reasons set forth in the Court's order on its motion to dismiss for lack of jurisdiction as well as for the claims of Mey, for the reasons set forth in its motion to compel arbitration. DIRECTV otherwise admits that it is not contesting that this Court is an appropriate venue in this case.

20. DIRECTV is not able to speak to the intentions of Congress in enacting the TCPA and thus denies the allegations of this paragraph for lack of knowledge.

21. DIRECTV admits that the TCPA includes provisions which allowed for the enactment of the national do-not-call list. DIRECTV lacks sufficient information to admit or deny whether this portion of the TCPA is the "most well-known aspect" and thus denies that portion of

the paragraph for lack of knowledge. DIRECTV denies that adding a telephone number to the National Do Not Call Registry prevents a consumer from receiving all forms of telephone solicitations. Except as so admitted, DIRECTV denies the allegations of this paragraph.

22. DIRECTV states that this paragraph does not contain factual allegations but rather classifies legal authority and therefore no response is required. To the extent a further response is required, denied.

23. DIRECTV states that this paragraph does not contain factual allegations but rather classifies legal authority and therefore no response is required. To the extent a further response is required, DIRECTV denies that this paragraph accurately classifies the prohibitions of the TCPA.

24. DIRECTV states that this paragraph does not contain factual allegations but rather classifies legal authority and therefore no response is required. To the extent a further response is required, in the absence of a citation to the FCC's authority that Plaintiff purports to cite, DIRECTV lacks sufficient information to admit or deny the allegations of this paragraph and thus denies the paragraph for lack of knowledge.

25. DIRECTV states that this paragraph does not contain factual allegations but rather classifies legal authority and therefore no response is required. To the extent a further response is required, DIRECTV denies that this paragraph accurately classifies the prohibitions of the TCPA.

26. DIRECTV states that this paragraph does not contain factual allegations but rather classifies legal authority and therefore no response is required. To the extent a further response is required, DIRECTV denies that this paragraph accurately classifies the prohibitions of the TCPA.

27. No corporate officers of DIRECTV are named in the complaint and thus DIRECTV cannot respond to the allegations of this paragraph for lack of knowledge.

28. The portion of the allegations of this paragraph that refers to claims of Shelton, Abramson, and Cunningham relates only to claims that have been dismissed and thus no answer is required. The remainder of the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny those allegations.

29. The portion of the allegations of this paragraph that refers to claims of Shelton, Abramson, and Cunningham relates only to claims that have been dismissed and thus no answer is required. The remainder of the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny those allegations.

30. The portion of the allegations of this paragraph that refers to claims of Shelton, Abramson, and Cunningham relates only to claims that have been dismissed and thus no answer is required. The remainder of the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny those allegations. Furthermore, DIRECTV is unable to admit or deny allegations about calls that Plaintiffs purport to intend to disclose at a later date.

31. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

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35. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

36. Denied.

37. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

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66. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather assert claims based on anonymous, unverified website postings. DIRECTV lacks sufficient information to admit or deny the allegations of this paragraph.

67. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

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72. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

73. Denied.

74. DIRECTV has not located such correspondence and on that basis denies the allegations of this paragraph.

75. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

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88. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

89. Denied.

90. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

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94. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

95. The allegations of the first paragraph of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny those allegations of this paragraph. DIRECTV has not located the correspondence referred to in the second sentence of this paragraph and on that basis denies the allegations of this paragraph.

96. DIRECTV has not located such correspondence and on that basis denies the allegations of this paragraph.

97. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

98. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

99. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

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228. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

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241. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

242. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

243. The allegations of this paragraph relate to claims that have been dismissed for lack of jurisdiction and thus no response is required.

244. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

245. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

246. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

247. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

248. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph. DIRECTV further denies that a predictive dialer is an automatic telephone dialing system as that term is defined in the TCPA.

249. DIRECTV admits that it has not located any records of Vance providing DIRECTV express written consent. With respect to AC1, the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

250. Denied.

251. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

252. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

253. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph. DIRECTV further denies that a predictive dialer is an automatic telephone dialing system as that term is defined in the TCPA.

254. DIRECTV admits that it has not located any records of Locke providing DIRECTV express written consent. With respect to AC1, the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

255. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

256. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

257. The allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit

or deny the allegations of this paragraph. DIRECTV further denies that a predictive dialer is an automatic telephone dialing system as that term is defined in the TCPA.

258. DIRECTV admits that it has not located any records of Stark providing DIRECTV express written consent. With respect to AC1, the allegations of this paragraph do not relate to the actions of DIRECTV, but rather allege acts performed by a third-party. DIRECTV thus lacks sufficient information to admit or deny the allegations of this paragraph.

259. DIRECTV admits that one of several channels used to sell subscriptions for its television services is a series of independent authorized dealers. DIRECTV denies that it controls these dealers or conducts marketing or distributing “through” them. Except as so admitted, the remainder of the allegations of this paragraph are denied.

260. DIRECTV admits that independent authorized dealers are authorized to make limited use of DIRECTV’s trademarks and trade name while attempting to sell DIRECTV services, as described in their contracts with DIRECTV. Except as so admitted, the remainder of the allegations of this paragraph are denied.

261. Denied.

262. Denied.

263. Admitted that DIRECTV’s third-party independent authorized dealers have limited access to certain DIRECTV internal systems to submit orders from customers for DIRECTV. The remainder of the allegations of this paragraph are denied.

264. Denied.

265. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the cases of *United States v. DIRECTV Inc., et al.*, No. 05-1211 (C.D. Cal. Dec. 12, 2005) and *United States of America vs. DIRECTV, Inc. et al*, No. 09-02605 (C.D. Cal. April 23, 2009)

and states further that the records of the proceedings are public documents which speak for themselves. Except as so admitted, DIRECTV denies the allegations herein.

266. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the case *United States v. DIRECTV Inc., et al.*, No. 05-1211 (C.D. Cal. Dec. 12, 2005) and states further that the records of the proceedings are public documents which speak for themselves including a non-admission of guilt or liability. Except as so admitted, DIRECTV denies the allegations herein.

267. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the case *United States v. DIRECTV Inc., et al.*, No. 05-1211 (C.D. Cal. Dec. 12, 2005) and that the records of the proceedings are public documents which speak for themselves, including a non-admission of guilt or liability. Except as so admitted, DIRECTV denies the allegations herein.

268. Denied.

269. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the case *United States of America vs. DIRECTV, Inc. et al*, No. 09-02605 (C.D. Cal. April 23, 2009) and that the records of the proceedings are public documents which speak for themselves, including a non-admission of guilt or liability. Except as so admitted, DIRECTV denies the allegations herein.

270. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the case *United States of America vs. DIRECTV, Inc. et al*, No. 09-02605 (C.D. Cal. April 23, 2009) and that the records of the proceedings are public documents which speak for themselves, including a non-admission of guilt or liability. Except as so admitted, DIRECTV denies the allegations herein.

271. DIRECTV admits that as part of a cooperative and negotiated settlement, it was sued in the case *United States of America vs. DIRECTV, Inc. et al*, No. 09-02605 (C.D. Cal. April 23, 2009) and that the records of the proceedings are public documents which speak for themselves, including a non-admission of guilt or liability. Except as so admitted, DIRECTV denies the allegations herein.

272. Denied.

273. Denied.

274. DIRECTV admits that the Amended Complaint is stylized as a class action. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the Amended Complaint includes an appropriate class definition, and denies that class certification is appropriate in this matter.

275. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

276. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

277. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

278. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

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response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

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285. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

286. The allegations of this paragraph do not contain factual assertions but rather set forth one or more legal conclusions to which no response is required. To the extent a further response is required, DIRECTV denies the allegations of this paragraph, denies that the above is an appropriate class definition, and denies that class certification is appropriate in this matter.

287. DIRECTV incorporates by reference its response to each previous paragraph of the Amended Complaint as if set forth fully herein.

288. Denied.

289. Denied.

290. DIRECTV incorporates by reference its response to each previous paragraph of the Amended Complaint as if set forth fully herein.

291. Denied.

292. Denied.

293. DIRECTV incorporates by reference its response to each previous paragraph of the Amended Complaint as if set forth fully herein.

294. Denied.

295. Denied.

ADDITIONAL DEFENSES

As for its affirmative defenses, and without assuming any burden that it would not otherwise have, DIRECTV states as follows. DIRECTV reserves the right to assert additional defenses upon discovery of further information regarding Plaintiffs' claims and upon the development of other relevant information.

FIRST ADDITIONAL DEFENSE

The damages sought are excessive and in violation of the Due Process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

SECOND ADDITIONAL DEFENSE

One or more members of the putative class lack standing to maintain the instant causes of action.

THIRD ADDITIONAL DEFENSE

Plaintiffs or one or more members of the putative class gave prior express consent to receive the telephone calls at issue in this case.

FOURTH ADDITIONAL DEFENSE

All the claims, in whole or in part, of Plaintiffs one or more members of the putative class are subject to mandatory arbitration because they are DIRECTV customers.

FIFTH ADDITIONAL DEFENSE

All of the claims constitute an undue burden on speech and thus violate the First Amendment of the United States Constitution. Moreover, the autodialer provisions of the TCPA were unconstitutional until such time as the Supreme Court severed an exemption for collecting a government debt that it found to be content based discrimination on speech. *See, e.g., Lindenbaum v. Realgy LLC*, 2020 WL 6361915 (N.D. Ohio Oct. 29, 2020).

SIXTH ADDITIONAL DEFENSE

DIRECTV is not vicariously liable for any calls made by an independent authorized dealer because no agency relationship exists between DIRECTV and any independent authorized dealer.

SEVENTH ADDITIONAL DEFENSE

Plaintiff has failed to join a party that was required to be joined under Federal Rule of Civil Procedure 19.

EIGHTH ADDITIONAL DEFENSE

Plaintiff's injuries and damages, and those of the members of the putative classes, if any, were caused solely by the acts and/or omissions of third parties and not by Defendants.

NINTH ADDITIONAL DEFENSE

The claims asserted are barred, in whole or in part, because DIRECTV has established and implemented with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c).

TENTH ADDITIONAL DEFENSE

Plaintiff or one or more members of the putative class have an established business relationship with DIRECTV or its affiliates.

March 11, 2021

/s/ Danielle M. Waltz

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

Wheeling Division

DIANA MEY,
CRAIG CUNNINGHAM,
STEWART ABRAMSON,
JAMES SHELTON,
DAVID and ROXY VANCE,
RUSSELL LOCKE, and THOMAS STARK,
individually and on behalf of a class of all
persons and entities similarly situated,
Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No.: 5:17-cv-00179-JPB

CERTIFICATE OF SERVICE

I, Danielle M. Waltz, counsel for Defendant DIRECTV, LLC, hereby certify that on this 11th day of March, 2021, a true and correct copy of the foregoing, *Defendant DirecTV LLC's Answer to the Amended Complaint*, was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Danielle M. Waltz

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